4437

BILL NO. S-79-03-32

SPECIAL ORDINANCE NO. S-53-79

ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS, SERIES 1979 (BRADTMILLER PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, the Fort Wayne Economic Development Commission has rendered its Project Report for the Paul A. Bradtmiller Project regarding the financing of proposed economic development facilities for Paul A. Bradtmiller and the Fort Wayne Planning Commission has commented favorably thereon; and

WHEREAS, the Fort Wayne Economic Development Commission conducted a public hearing on July 25, 1978 and March 20, 1979, and also adopted resolutions on said dates which Resolutions have been transmitted hereto, finding that the financing of certain economic development facilities of Paul A. Bradtmiller complies with the purposes and provisions of I.C. 18-6-4.5 and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council and has approved the forms of and has transmitted for approval by the Common Council the Lease Agreement, Sublease Agreement, Assignment of Sublease, Guaranty Agreement, and Mortgage and Indenture of Trust; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA THAT:

Section 1. It is hereby found that the financing of the economic development facilities referred to in the Lease Agreement approved by the Fort Wayne Economic Development Commission and presented to this Common Council, the issuance and sale of revenue bonds, the use of the proceeds of the revenue bonds for the acquisition and construction of such facilities to Paul A. Bradtmiller, the sublease of said facilities by Paul A. Bradtmiller, as a developer, to Don Ayres Pontiac, Inc., as user, the payment of the revenue bonds by the rent payments of Paul A. Bradtmiller under the Lease Agreement, the guarantee of the payment of the principal and interest on the revenue bonds by Paul A. Bradtmiller under the Guaranty Agreement, and the securing of said bonds by the mortgaging of such facilities to the Trustee under the Mortgage and Indenture of Trust and the assignment of the Sublease Agreement to the Trustee, complies with the purposes and provisions of I.C. 18-6-4.5 and will be of benefit to the health and welfare of the City of Fort Wayne and its citizens.

Section 2. The final forms of the Lease Agreement, Sublease Agreement, Assignment of Sublease, Guaranty Agreement, and Mortgage and Indenture of Trust approved by the Fort Wayne Economic Development Commission are hereby approved and all such documents (herein collectively referred to as the "Financing Agreement" referred to in I.C. 18-6-4.5), shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk.

Section 3. The City of Fort Wayne shall issue its Economic Development First Mortgage Revenue Bonds, Series 1979 (Bradtmiller Project), in the total principal amount of Seven Hundred Thousand Dollars ($700,000) for the purpose of procuring funds to pay the costs of acquisition, construction and equipping of the economic development facilities as more particularly set out in the Mortgage and Indenture of Trust and Lease Agreement incorporated herein by reference, which bonds will be payable as to principal, premium, if any, and interest from the rent payments made by Paul A. Bradtmiller under the Lease Agreement and from other revenues and income assigned under the Assignment of Sublease or as otherwise provided in the above described Mortgage and Indenture of Trust. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne.

Section 4. The Mayor, Clerk, and Controller are authorized and directed to sell such bonds to the purchasers thereof at a rate of interest on the bonds not to exceed 8% per annum and at a price not less than 100% of the principal amount thereof.

Section 5. The Mayor and Clerk are authorized and directed to execute the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the bonds authorized herein. The signatures of the Mayor and Clerk on the bonds may be facsimile signatures. The Clerk is authorized to arrange for delivery of such Bonds to the Trustee named in the Mortgage and Indenture of Trust, payment for which will be made to the Trustee named in the Mortgage and Indenture of Trust and delivered by the Trustee to the purchasers thereof.

Section 6. The provisions of this Ordinance and the Mortgage and Indenture of Trust securing the bonds shall constitute a contract binding between the City of Fort Wayne and the holder of the Economic Development First Mortgage Revenue Bonds, Series 1979 (Bradtmiller Project), and after the issuance of said bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as any of said bonds or the interest thereon remains unpaid.

Section 7. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Passed and adopted this 27th day of March, 1979.

Vivian G. Schmidt
Councilman

Approved as to
Form and Legality.

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock _____ M.,E.S.T.

DATE: _____

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	0		1	
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES				✓	
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 3-27-79

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

(~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE

(~~RESOLUTION~~) No. S-53-79 on the 27th day of March, 1979.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

James Stier
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of March, 1979, at the hour of 11:30 o'clock A M.,E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 29th day of March, 1979 at the hour of 11 o'clock _____ M.,E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-79-03-32

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance

(BRATTMILLER PROJECT)

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

VIVIAN G. SCHMIDT - CHAIRMAN

WILLIAM T. HINGA - VICE CHAIRMAN

JAMES S. STIER

JOHN NUCKOLS

DONALD J. SCHMIDT

3-27-79 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

SUSPENSION OF RULES

BILL NO. S-79-03-32

Councilman ~~woman~~ D. Schmidt, moved to suspend the rules on passage of BILL NO. S-79-03-32, at this meeting of 3-27-79, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman Hunter, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and S-53-79 ORDINANCE was accordingly placed on its passage.

DATE: 3-27-79

Charles W. Westerman
CITY CLERK

James S. Stier
PRESIDING OFFICER

	AYES 8	NAYS 0	ABSTAINED	ABSENT 1	TO-WIT
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES				✓	
NUCKOLS	✓				
D. SCHMIDT	✓				
V. SCHMIDT	✓				
STIER	✓				
TALARICO	✓				

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ordinance No. S-53-79.

ATTEST: (SEAL)

DATE: 3-27-79

Charles W. Westerman
CITY CLERK

PERFECTION BISCUIT COMPANY

SERIES 1979 PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Perfection Biscuit Company ("Company"), a corporation organized and existing under the laws of the State of Indiana, hereby promises to pay to the order of the City of Fort Wayne, Indiana ("Issuer"), on or before 11 o'clock a.m. (prevailing Fort Wayne time) the principal sum of Four Million Dollars ($4,000,000) with interest (computed on the basis of a 365-day year) thereon at a rate of eight and one quarter percent (8 1/4%) per annum from the date hereof until paid and payable in monthly installments of interest only payable commencing on March 31, 1979, and on the last day of each month thereafter to and including November 30, 1979, and thereafter payable in one hundred eighty (180) monthly installments, each containing principal and interest and each in the amount of $38,540.65, payable commencing on December 31, 1979, and on the last day of each month thereafter to and including November 30, 1994, except as the provisions hereinafter set forth with respect to prepayment prior to maturity may become applicable hereto.

Payments of both principal and interest are to be endorsed to the Trustee, and are to be made directly to the Trustee for the account of the Issuer pursuant to such endorsement. Such endorsement is to be made as security for the payment of the bonds of the designated "City of Fort Wayne Economic Development First Mortgage Revenue Bonds, Series 1979 (Perfection Biscuit Company Project)" issued pursuant to the Indenture (the "Bonds"). All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as a part of this Series 1979 Note.

This Series 1979 Note is issued pursuant to the Agreement, and is entitled to the benefits, and is subject to the conditions thereof. The obligations of Company to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim or recoupment by reason of any default by Issuer under the Agreement or under any other agreement between Company and Issuer or out of any indebtedness or liability at any time owing to the Company by the Issuer or for any other reason.

This Series 1979 Note is subject to prepayment under the terms and conditions, and in the amounts, provided in Article IX of the Agreement. In the event of cumulative partial prepayment of each $250,000 pursuant to Section 9.1 of the Agreement, the monthly principal and interest payment shall be

proportionally reduced. Until such partial prepayments accumulate to $250,000 and an adjustment is made to the monthly payment schedule, the Trustee shall cause a record of such prepayments to be endorsed upon an attachment to this Series 1979 Note setting forth an appropriate adjustment on the amounts of each monthly payment allocable to principal and interest.

If an "event of default" occurs under Section 8.1 of the Agreement, the principal of this Series 1979 Note may be declared due and payable in the manner and to the effect provided in Article VIII of the Agreement.

No recourse shall be had for the payment of the principal or prepayment price of, or interest on this Series 1979 Note, or for any claim based hereon or on the Agreement, against any officer, director or stockholder, past, present or future, of Company as such, either directly or through Company, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.

In any case where the date of payment hereunder shall be in the City of Fort Wayne, Indiana, a Saturday, Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then such payment shall be made on the next succeeding business day with the same force and effect as if made on the date of payment hereunder.

All terms used in this Series 1979 Note which are defined in the Agreement shall have the meanings assigned to them in the Agreement.

IN WITNESS WHEREOF, Company has caused this Series 1979 Note to be duly executed, attested and delivered as of March 1, 1979.

PERFECTION BISCUIT COMPANY

By _____
H. Leslie Popp, Jr., President

(SEAL)

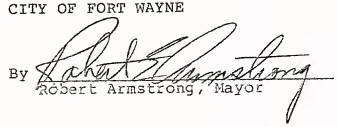
Attest:

_____
Ralph E. Popp, Secretary

ENDORSEMENT

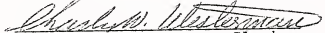
Pay to the order of Lincoln National Bank and Trust Company of Fort Wayne, as Trustee under the Mortgage and Indenture of Trust dated as of March 1, 1979, without recourse against the Issuer.

CITY OF FORT WAYNE

By 
Robert Armstrong, Mayor

(SEAL)

Attest:


Charles W. Westerman, Clerk